



## **Littering Fixed Penalty Notice Policy**

**Date of issue: February 2023**

**Reviewed: December 2023**

**Review Date: December 2026**

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## **1.0 Policy Objectives**

- 1.1 Taking proportionate and effective enforcement action against littering and related offences is a practical step that enforcing authorities can take to help them in delivering their statutory duties to keep relevant land clear of litter and refuse. As well as influencing the behaviour of those against whom enforcement action is taken, the use of proportionate enforcement can also help to deter others from committing offences, which cause damage to local environmental quality. In turn, this will assist all duty bodies in keeping their relevant land and highways clear of litter and refuse.
- 1.2 The principles of the Regulators Code apply to enforcement action carried out by local authorities. An effective environmental offences enforcement regime is one that is proportionate, consistent, targeted, transparent and accountable. Section 21 of the Legislative and Regulatory Reform Act 2006 states: 21(1) Any person exercising a regulatory function to which this section applies must have regard to the principles in subsection (2) in the exercise of the function. 21 (2) Those principles are that— (a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; (b) regulatory activities should be targeted only at cases in which action is needed.
- 1.3 Enforcing authorities are expected to combine enforcement with education in order to change behaviour. Given the quasi-judicial nature of the enforcement process, enforcing authorities will need to balance the need for consistency with an approach, which remains targeted and proportionate. A blanket 'zero-tolerance' approach when issuing penalties is unlikely to achieve this.
- 1.4 Enforcing authorities should communicate to the community their reasons for their use of enforcement, and make it clear that enforcement is about supporting the achievement of a clean and attractive local environment: in no circumstances should enforcement be considered a means to raise revenue. Any perception that enforcement activity is being used intentionally to generate income is likely to undermine the legitimacy of the enforcement regime in the eyes of the local community, which in turn may diminish the deterrent effect.

## **2.0 Background**

- 2.1 There is no comprehensive statutory definition of litter, but the courts have taken a wide approach to the term. Section 98 of the Environmental Protection Act 1990 (the "EPA 1990") provides that litter includes cigarette ends and chewing gum, but does not indicate the full breadth of the term. A government code of practice for litter explains that litter is normally thought to include:
  - 2.1.1 "materials, often associated with smoking, eating and drinking, that are improperly discarded and left by members of the public; or are spilt during business operations as well as waste management operations."

2.1.2 Section 87 of the EPA1990 provides that the offence of littering occurs when a person throws down, drops or otherwise deposits any litter on land (or water) that is:

- under the control of the litter authority;
- publicly accessible (with or without payment); and
- open to the air. (An area is open to the air if it is open on one side, even if the area is covered.)
- and leaves it there. No offence is committed if the owner or occupier of the place where the litter is deposited gives consent.

### **3.0 Legislation**

3.1 Environmental Protection Act 1990 Section 87+88

3.2 Environmental Offences (Fixed Penalties)(England) Regulations 2017

### **4.0 Process**

4.1 Where on any occasion an authorised officer of a litter authority, in this case Mid Devon District Council, finds a person who they have reason to believe has on that occasion committed an offence under section 87 EPA 1990, in the area of that authority, they may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

4.2 A District officer will approach an individual identified as committing an offence under section 87. The officer will engage with the individual and explain the offence they have witnessed. For the purpose of education, the officer will normally give the offender the opportunity to place the dropped litter into a bin or, if there is no bin located nearby, to pick up the litter and take it away. Where an offender refuses to pick up litter or in the officer's opinion the offence is such that it warrants a Fixed Penalty Notice without giving the opportunity of picking up the litter to avoid a Fixed Penalty, the officer will explain that the officer intends to issue a Fixed Penalty Notice to the offender. The officer will request the name and address of the individual in order to process any fixed penalty notice.

4.3 A person commits an offence if :—  
(a) he fails to give his name and address when required to do so  
(b) he gives a false or inaccurate name or address in response to a requirement under that subsection.  
This offence is prosecuted as a summary conviction at standard scale 3.

4.4 A fixed penalty notice is an opportunity for the offender to discharge criminal responsibility of the offence by way of payment of the fine. The offender has a period of 14 days from the date on the FPN to make payment before prosecution proceedings will be commenced.

4.5 Where a FPN is issued via the post the date in which 14 days commences is the date at which it would be reasonable for that letter to be delivered, usually 2 days after posting.

4.6 A FPN will include :

- particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence
- the period during which, proceedings will not be taken for the offence
- the amount of the fixed penalty and
- the person to whom and the address at which the fixed penalty may be paid, in this matter that would be Mid Devon District Council.

## **5.0 Circumstances for non-issuance**

5.1 Fixed penalty notices should not be issued if any of the following apply: There is no criminal liability – for example if the offender is a child under the age of 10 (the child's parents or legal guardian should be informed instead). Enforcement action is inappropriate or would be disproportionate for the offence – for example, if the offender is vulnerable or it would not be in the public interest to prosecute. If a littering offence is accidental - for example if something falls from someone's pocket. In order to maintain public trust in the legitimacy of enforcement action against littering, enforcement action should only be taken where there is evidence of an intent to drop and leave litter. It is not in the public interest to take enforcement action if there is not clear evidence that the individual intended to cause litter.

## **6.0 Persistent Evaders**

6.1 Some people commit environmental offences deliberately and often, and may also fail to pay the fixed penalties issued against them. A person can be classed as a 'persistent offender' if there are two or more recorded offences by the individual. In such circumstances, a further fixed penalty is unlikely to be appropriate and the Council should consider prosecuting (if it is in the public interest to do so).

## **7.0 FPN Cost**

7.1 As per the Environmental Offences (Fixed Penalties) (England) Regulations 2017 the amount payable is £150. This will be reduced to £75 if paid within a period not exceeding 7 days from the date of the FPN.

7.2 In line with Defra Guidance, the cost of an FPN should be proportionate to the offence, which is committed. Owing to this advice, a 50% reduction in the cost is offered if the Fixed Penalty Notice is paid within 14 days of the issuance date.

## **8.0 Non Payment**

- 8.1 In circumstances of non-payment after a period of 38 days from issuance, the case will be passed over to MDDC legal team who will pursue with prosecution proceedings. In all cases of non-payment without reasonable excuse, prosecution proceedings will be pursued against the individual.